



October 17, 2000

Mr. Jeff Butters
Chief of Police
City of Wylie Police Dept.
2000 North Highway 78
Wylie, Texas 75098

OR2000-4036

Dear Mr. Butters:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#140201.

The Wylie Police Department (the "department") received two requests for the complete copy of the report on case no. 9701526. You received the first request from the Occupational Safety and Health Administration ("OSHA") dated July 20, 2000.¹ The second request that resulted in your present inquiry to this office is dated August 7, 2000. You ask this office whether OSHA is considered a law enforcement agency and if so, would your records fall under the exception for open cases that are being investigated?

Section 552.301(b) mandates that a governmental body, in asking for a decision from this office must state the exceptions that apply to the requested information no later than the tenth business day after the date it received the written request. Gov't Code §552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You have not specifically asserted any exception that you believe applies to the requested information as required by section 552.301(b). Additionally, you have not provided this office reasons why any exception would apply to the requested information as

¹You inform us that you released the information to OSHA per our telephone conversation on October 16, 2000. ‡

required by section 552.301(e)(1). You also have not submitted to this office a signed statement or evidence sufficient to establish the date the department received the present request for information in accordance with section 552.301(e)(3). You simply ask this office if the records would fall "under the exception for open cases that are being investigated."

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that information made confidential by another source of law constitutes a compelling reason to withhold the information sufficient to overcome the section 552.302 presumption of openness. *See, e.g.*, Open Records Decision Nos. 150 (1977), 26 (1974); *see also* Gov't Code § 552.352 (distribution of confidential information constitutes a criminal offense). Your questions appear to raise section 552.108 of the Government Code to except the submitted information from required public disclosure.

Section 552.108 is a discretionary exception. Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). The department's apparent assertion of a discretionary exception does not constitute a compelling reason to overcome the presumption of openness under section 552.302. *Cf.* Open Records Decision No. 630 (1994). However, this office has found that the need of another governmental body to withhold requested information under the statutory predecessor to section 552.108 may provide a compelling reason to withhold the information from public disclosure. Open Records Decision No. 586 (1991). Because the department has released the information to OSHA, the department appears to raise this issue when it asks whether OSHA is considered a law enforcement agency. This office understands that OSHA primarily functions as a regulatory agency. Therefore, we do not believe OSHA is a law enforcement agency for the purposes of section 552.108. *See* Open Records Decision No. 199 (1978) (stating an agency whose function is essentially regulatory in nature is not a 'law enforcement agency' for purposes of predecessor to section 552.108, even though it is charged with the duty of enforcing its own statute). As the department has not demonstrated a compelling reason in order to withhold the information at issue, we conclude that the submitted information must be released to the requestor under

section 552.302 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

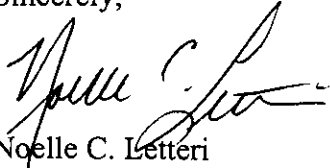
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noelle C. Letteri', written over the printed name.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID#140201

Encl. Submitted documents

cc: Mr. Rod Taylor
Sanden International USA Incorporated
601 South Sanden Boulevard
Wylie, Texas 75098-4999
(w/o enclosures)